FILE COPY

Office Supreme
SEP
CHARLES

# In the Supreme Court

OF THE

## United States

OCTOBER TERM, 1931

No. 393

JAMES DUNN,
*Petitioner,*

vs.

UNITED STATES OF AMERICA,
*Respondent.*

PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals
For the Ninth Circuit
*and*
BRIEF IN SUPPORT THEREOF

RAYMOND T. COUGHLIN
Bryte Building,
Sacramento, California.
EUGENE S. SELVAGE,
First National Bank Building,
Eureka, California.
CLIFFORD A. RUSSELL,
Capital National Bank Building,
Sacramento, California.
*Attorneys for Petitioner.*

## SUBJECT INDEX


Page

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit ..... 3
The Decision Below ..... 3
Summary of the matter involved ..... 4
Reasons relied on for allowance of Writ ..... 6

BRIEF FOR PETITIONER ..... 11

Official Report of the opinion delivered in the Court below ..... 11
Ground on which the jurisdiction of this Court is invoked ..... 12
Concise statement of the case ..... 12

SPECIFICATIONS OF ERROR:

Error No. I ..... 15
Argument upon Error No. I ..... 16
Error No. II ..... 17
Argument upon Error No. II ..... 18
Error No. III ..... 22
Argument upon Error No. III ..... 23

CONCLUSION ..... 27

## TABLE OF AUTHORITIES CITED


Fisher vs. United States, 32 Fed. (2d), 602 at 604 ..... 16
Barker vs. United States, 289 Fed. 249, at 250 ..... 16
Munsey vs. United States, 289 Fed. 780 ..... 17
Tucker vs. United States, 299 Fed. 235 ..... 18
Dandrea vs. United States, 7 Fed. (2d) 861 ..... 18
Anderson vs. United States, 31 Fed. (2d) 436 ..... 20
Lancaster vs. United States, 26 Fed. (2d) 773 ..... 23
Murphy vs. United States, 18 Fed. 509 ..... 23
Boyle vs. United States, 22 Fed. (2d) 548 ..... 23
Peru vs. U. S., 4 Fed. (2d) 881 ..... 24
John Hohenadal Co. vs. U. S. 295 Fed. 489 ..... 24
Soper vs. United States 27 Fed. (2d) 648 ..... 24
Hessee vs. United States, 28 Fed. (2d) 770 ..... 24
United States vs. Anderson 31 Fed. 436 ..... 24
Speiller vs. United States, 31 Fed. (2d) 682 ..... 25

IN THE

# SUPREME COURT

OF THE

# UNITED STATES OF AMERICA

OCTOBER TERM, 1931

No.....

---

JAMES DUNN,

*Petitioner,*

vs.

UNITED STATES OF AMERICA,

*Respondent.*

## PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals

For the Ninth Circuit

---

*To the Honorable Charles Evans Hughes, Chief Justice of the United States Supreme Court, and to the Associate Justices of said court.*

The Petitioner, JAMES DUNN, respectfully represents:

## THE DECISION BELOW.

1. On June 8th, 1931, the United States Circuit

Court of Appeals for the Ninth Circuit affirmed a Judgment of the District Court of the United States for the Northern District of California convicting petitioner of a violation of the Jones-Stalker Act.

2. A rehearing was denied on the 22nd day of July, 1931.

3. The opinion of the Circuit Court of Appeals for the Ninth Circuit will be found in the transcript of record filed herewith. This opinion has not yet been reported.

---

## SUMMARY OF THE MATTER INVOLVED

1. The Petitioner was charged by an indictment containing three counts with violating the Jones-Stalker Act. Under the first count petitioner was charged with maintaining, on the fourth day of July, 1930, a common nuisance at a place known as number 301 Second Street, in the City of Eureka, County of Humboldt, State of California, by then and there keeping for sale at said place certain intoxicating liquors fit for beverage purposes, to-wit: Five drinks of whiskey and one drink of beer.

Under the second count the defendant was charged with the possession of the same five drinks of whiskey and one drink of beer.

Under the third count the defendant was charged with the sale of the same five drinks of whiskey and one drink of beer.

2. The evidence as introduced on the part of the Government was very short, being in substance as follows:

(a) That petitioner was the owner of premises number 301 Second Street in the City of Eureka, County of Humboldt, State of California. That the premises consisted of a room fronting on Second Street, containing fishing tackle, sporting goods, cigars, and soft drinks for sale, with a larger room to the rear, containing pool tables.

(b) One Federal prohibition agent testified that about 7:30 o'clock P. M. on the 26th day of June, 1930, in company with another prohibition agent and two unknown men, he visited said premises. At that time they purchased, so said agent testified, from defendant in the rear room, five drinks of whiskey and one drink of beer, which they drank and for which they paid $1.50. The sale and drinking of the six drinks being accomplished within the space of a few minutes.

The other prohibition agent testified upon direct examination substantially to the same effect.

3. A motion for directed verdict was made by petitioner at the close of the Government's case, and again at the close of the case, on the ground that the evidence was insufficient to show that defendant on the 4th day of July, 1930, maintained a common nuisance as presented in the first count of the indictment. Said motions were denied by the Court.

4. The defendant was convicted on the first count of said indictment of maintaining a common nuisance, and was acquitted on the second count of possession, and was acquitted on the third count of sale.

Judgment upon said verdict was entered, and the court sentenced the defendant to be imprisoned for the period of one year in the county jail, Contra Costa County, California, and pay a fine of five hundred dollars.

5. During the course of the trial important questions arose which are briefly stated in the following "reasons relied on for the allowance of the Writ."

---

## REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The Circuit Court of Appeals has decided important questions of general law as involved in this case in a way untenable and in conflict with the weight of authority and in this regard petitioner particularly represents:

(a) The evidence disclosed a single sale of liquor on the 26th day of June, 1930, without evidence of any sort to show any continuity of the alleged violation.

(b) The Courts below refused the application of the rule sustained by numerous cases to the effect that "a common nuisance implies a continuity of violations and that a single sale with no circumstances warranting the inference that the place where the sale is made is maintained for any of the unlawful purposes denounced by the statutes, is insufficient to sustain a conviction for maintaining a common nuisance."

2. The Court erred in giving the jury the following instruction to-wit:

> "The familiar rule of the civil law that a person is held to be responsible for the act of an agent employed by him when the act is done in the course of the agency had and in furtherance of it is equally applicable in the criminal law. When an indictment charges a defendant with crime it is not necessary for the Government to prove that the act was committed by the defendant personally, but it is sufficient for the Government to prove that the act was committed by an agent of the defendant, and committed in the course of the agency and in furtherance of it. It matters not whether his agent was an innocent agent or a guilty agent, a conscious or an unconscious instrumentality of the crime; the agent's principal would be criminally liable in either case."

on the ground that there was no evidence in this case of any agent of defendant making a sale and no evidence upon which to base agency, and that the instruction would tend to and did confuse the jury, by inferring that some other person who was an employee of defendant may have made the sale complained of, and that if so, the defendant would be responsible therefor, and on the further ground a principal cannot be held liable for the act of an agent unless he has knowledge thereof.

3. That the verdict convicting the defendant of maintaining a nuisance and acquitting him of possession and sale is inconsistent, cannot be reconciled and cannot stand for the following reasons, to-wit: The testimony of the Government was to the effect that defendant made a sale of six drinks to two Government agents on June 26, 1930. Of this sale the jury found the defendant not guilty. There was no evidence of any other sale by any other person whomsoever, and there was no evidence that any liquor other than the six drinks was ever sold or kept on said premises.

That by finding said defendant not guilty of said sale and not guilty of said possession, the jury cannot as a matter of law find the defendant guilty of nuisance.

There is a conflict of authority among the United States Circuit Courts upon the question of inconsistent verdicts of this nature, as shown by the brief in support of this petition, filed herewith.

Your petitioner respectfully represents that this case presents highly important questions of general law which should be settled by this Honorable Court.

WHEREFORE, your petitioner believing that the aforesaid judgment of the United States Circuit Court of Appeals for the Ninth Circuit is erroneous, prays that a Writ of Certiorari may be issued out of and under the seal of this Court directed to the said United States Circuit Court of Appeals for the Ninth Circuit, as provided by law, to the end that the said case may be reviewed and determined, and that upon final consideration thereof the judgment of the said United States Circuit Court of Appeals for the Ninth Circuit may be reversed with such directions as to this Court may seem proper and in conformity with law.

Dated: September 10th, 1931.

Respectfully submitted,

RAY T. COUGHLIN

EUGENE S. SELVAGE

CLIFFORD A. RUSSELL

*Attorneys for Petitioner.*

We, Raymond T. Coughlin, Eugene S. Selvage, and Clifford A. Russell, attorneys for the within named petitioner, do hereby certify that in our judgment the foregoing petition is well founded and that it is not interposed for the purpose of delay.

RAYMOND T. COUGHLIN

EUGENE S. SELVAGE

CLIFFORD A. RUSSELL

IN THE

# SUPREME COURT

OF THE

# UNITED STATES OF AMERICA

OCTOBER TERM, 1931

No.....

JAMES DUNN,

*Petitioner,*

vs.

UNITED STATES OF AMERICA,

*Respondent.*

## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

To The United States Circuit Court of Appeals,
For the Ninth Circuit.

## OFFICIAL REPORT OF THE OPINION DELIVERED IN THE COURT BELOW.

The judgment of the trial court was entered on July 25th, 1930.

The opinion of the United States Circuit Court of Appeals for the Ninth Circuit, written by the Honorable Curtis Wilbur, Circuit Judge, was entered and filed on June 8, 1931, and is cited in the Transcript of Record which is filed herewith. This opinion has not as yet been reported.

The petition for rehearing was filed June 27th, 1931, and was denied July 22nd, 1931, as shown by the transcript of record, filed herewith.

---

## GROUND UPON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The statute under which the jurisdiction of this Honorable Court is invoked, is Section 240 Judicial Code, 28 U. S. A., Sec. 347.

---

## CONCISE STATEMENT OF THE CASE.

The petitioner, hereinafter referred to as "defendant," is the owner of premises in the City of Eureka, County of Humboldt, State of California. The premises consist of a room fronting on one of the main streets of the town, containing fishing tackle, sporting goods, soft drinks, with a larger room in the rear containing pool tables.

On the 26th day of June, 1930, two Federal Prohibi-

tion Agents visited the premises. According to their testimony they purchased from defendant in the rear room, five drinks of whiskey and one drink of beer, for which they paid $1.50.

Subsequently the defendant was charged by indictment containing three counts with violating the Jones-Stalker Act.

Under the first count the defendant was charged with maintaining on the 4th day of July, 1930, a common nuisance at the place described above, by then and there keeping for sale at said place certain intoxicating liquor fit for beverage purposes, to-wit: Five drinks of whiskey and one drink of beer.

Under the second and third counts defendant was charged with the possession and sale, respectively, of the same alleged intoxicants.

Upon the trial the Government rested its case upon the testimony of the two prohibition agents, together with a stipulation of counsel that the defendant was the owner of the premises in question.

The defendant denied absolutely that he sold any liquor to the agents on the 26th day of June, 1930, or at any other time, and alleged that he had never seen either of them until July 4th, 1930, the date of his arrest. He stated that on the 26th day of June, 1930, he was at his ranch

and did not return to the premises in question until after the alleged sale.

The trial court gave the following instruction:

> "The familiar rule of the civil law that a person is held to be responsible for the act of an agent employed by him when the act is done in the course of the agency had and in furtherance of it is equally applicable in the criminal law. When an indictment charges a defendant with crime it is not necessary for the Government to prove that the act was committed by the defendant personally, but it is sufficient for the Government to prove that the act was committed in the course of the agency and in furtherance of it. It matters not whether his agent was an innocent agent or a guilty agent, a conscious or an unconscious instrumentality of the crime; the agent's principal would be criminally liable in either case."

The jury found the defendant not guilty of *possessing* said five drinks of whiskey and one drink of beer and not guilty of the *sale* of said liquor, but convicted the defendant on the first count of maintaining a common nuisance.

Upon appeal, defendant in his brief and in the oral argument before said Circuit Court, contended that the sale of liquor on the 26th day of June, 1930, standing of itself was not sufficient to justify the verdict of guilty on the nuisance count, particularly when the indictment set forth the maintenance of the nuisance on the 4th day

of July, 1930, and the evidence showed that the officers visited the premises on the latter date and found no liquor.

Upon appeal, defendant also contended that there was an utter lack of proof to show knowledge on the part of defendant that any unknown agent was selling liquor, and that the trial court in giving the instruction quoted above, erred in not advising the jury that the principal must have knowledge of or consent to the alleged violation.

Upon appeal, defendant also called the attention of the Appellate Court to the verdict of the jury, which petitioner contends is hopelessly inconsistent. The Appellate Court found the evidence as to nuisance sufficient to sustain the conviction without particularly disposing of defendant's many specifications of error upon the point.

The defendant here specifies in detail the following errors upon which he relies, together with arguments thereon, viz:

---

ERROR NO. I.

The Appellate Court erred in holding that the single sale of liquor on the 26th day of June, 1930, was sufficient to justify the verdict of guilty of maintaining a common nuisance, especially where the indictment set forth the maintenance of the nuisance on the 4th day of July, 1930.

## ARGUMENT UPON ERROR NO. I.

A period of eight days elapsed between the two visits of the various government officers. No evidence of any sort was introduced on behalf of the government to show the continuation of the nuisance.

The law is clear that a common nuisance implies a continuity of violations and that a single sale with no circumstances warranting the inference that the place where the sale is made is maintained for any of the unlawful purposes denounced by the Statutes, is insufficient to sustain a conviction for maintaining a common nuisance. See to this effect,

*Fisher* vs. *United States,* 32 Fed. 2nd, 602 at 604.

See also: *Barker* vs. *United States,* 289 Fed. 249, where it is stated by the court on page 250:

> "That if the evidence be confined to a single sale with no evidence of other violations, or habitual sales, and likewise no evidence upon which such acts may reasonably be deducted, the penalties provided in the Act for unlawful sale should alone apply."

In the case last cited there was a sale and also a considerable quantity of intoxicating liquor found in the possession of the defendant.

In the case at bar there was no evidence other than the sale of said six drinks. No liquor was found upon

the premises and there were no facts presented tending to show any habitual violation.

See also: *Munsey* vs. *United States,* 289 Fed. 780, where it is stated in the syllabus:

> "Evidence of the sale of a pint of whiskey by defendant at her place of residence held insufficient to justify a conviction for maintaining a nuisance, under National Prohibition Act, Title 2, Subdivision 21, where no other liquor was found on her person or premises."

The presumption of innocence must prevail and it must be conceded that the nuisance, if any, which existed on the 26th day of June, was abated before the 4th day of July.

---

## ERROR NO II.

The Appellate Court erred in not holding as prejudicial the instruction of the trial court upon the question of agency. The Court instructed the jury,

> "It is sufficient for the government to prove that the act was committed by an agent of the defendant, and committed in the course of the agency and in furtherance of it. It matters not whether his agent was an innocent agent or a guilty agent, a conscious or an unconscious instrumentality of the crime; the agent's principal would be criminally liable in either case."

## ARGUMENT UPON ERROR NO. II.

It is the contention of defendant that before an owner or proprietor can be found guilty of maintaining a nuisance it must be shown that he had knowledge that intoxicating liquor was being kept for sale upon the premises.

This instruction directs the jury to find the defendant guilty in the event an agent of defendant made the sale in question even though the defendant may have known nothing about it; that all the Government had to do was to prove that the act complained of was committed by an agent of the defendant in the course of the agency. We do not believe this to be the law.

See *Tucker, et al.* vs. *United States,* 299 Federal 235, where it is held:

> "There is no question of master and servant among wrongdoers."

See *Dandrea* vs. *United States,* 7 Federal 2nd 861, where it is stated in the syllabus:

> "Evidence on prosecution for sale of liquor by another held insufficient for conviction on theory of defendant being proprietor of place, there being lacking substantial evidence that he was proprietor at the time of sale, *as well as that the sale was made with his knowledge and consent, or on his behalf and as part of his business, and under such circumstances that he must be held to know that such sales were being made.*"

There was no evidence whatsoever produced by the Government in the case at bar to the effect that an agent of defendant made the sale of said six drinks, or that any agent of defendant possessed or kept liquor upon said premises for sale, or that defendant had knowledge of any sale by an agent or consented thereto, or that any sale of liquor was made, or that any liquor was kept, by an agent upon said premises under such circumstances that the defendant must be held to have knowledge thereof. Further, we contend, this case did not involve the question of agency, and it was error to instruct upon an issue not raised by the issues or the evidence.

The defendant did not make said sale of said six drinks and the jury by its verdict so found. The question therefore presented is, can the jury "guess" that the sale may have been made by an agent of defendant?

Nowhere in this instruction did the trial court advise the jury that the principal must have knowledge of or consent to the alleged violation. If liquor were sold upon the premises without the knowledge or consent of Dunn, he could not be held as an aider, abettor or principal. The mere fact of ownership of the premises is not sufficient to justify his conviction upon the nuisance count.

The Apellate Court in its opinion, page 3, said: "The verdict of the jury on the first count shows that they

are satisfied beyond a reasonable doubt that the premises were kept and maintained and liquor was there *possessed* for the purposes of illegal sale, and while they are not able to say beyond a reasonable doubt that the actual sale was made by an authorized agent of appellant, they were convinced that the appellant kept the liquor there for the purpose of sale."

How can the reasoning of the Appellate Court that "liquor was there possessed for purposes of illegal sale" be reconciled by the verdict of the jury that liquor was not possessed there.

Upon what theory under the facts as adduced could the jury be convinced that the appellant kept the liquor there for the purpose of sale, when the jury said the defendant did not possess the liquor in question in the premises described in the indictment.

The case of *Anderson* vs. *United States,* 31 Fed. (2nd) 436, cited by the Appellate Court in its decision relates to the distinction between conspiracy and the substantive offense. A person may be guilty of conspiracy even though he does not actively participate in any of the overt acts set forth in the pleading or proved in the trial. When he joins the conspiracy he becomes legally responsible for all acts done by his co-conspirators in furtherance of the conspiracy. There is no difficulty in reconciling these apparently inconsistent verdicts.

But in the instant case to apply the ruling in the *Anderson* case "the verdict would not be reversed if it were supported by the evidence," where is the supporting evidence that the unknown person was an agent of the Defendant, selling liquor with the knowledge or consent of the Defendant. If such evidence cannot be found then the verdict of the jury on the nuisance count must be reversed.

The Appellate Court concedes by the foregoing language that the jury were not able to say beyond a reasonable doubt that the actual sale was made by an authorized agent of appellant. The person having the possession of the liquor intended for sale, in order to sustain the conviction as against this defendant, must have been an authorized agent of appellant. If the jury could not say that this unknown man who made the sale was authorized by Dunn to make the sale how could they say that this unknown person was authorized by Dunn to keep the liquor there for the purpose of sale, particularly when the jury further said this unknown agent did not possess any liquor.

The Appellate Court says "The effect of the verdict is that the jury had a reasonable doubt as to whether or not the person who sold the liquor at the time and place in question was acting as the agent for and under the authority of appellant." (Page 3).

If such is the case, how can the verdict of guilty on

the nuisance count be sustained, for the sale must have been made by an agent of the defendant, otherwise there is no nuisance.

To reconcile the verdict of the jury with the proof, one of two theories must be adopted, viz:

(a) Either Defendant made the sale as contended by the prosecution or

(b) The sale was made by an agent of the Defendant during his absence.

The first theory must fall because it is hopelessly inconsistent with the finding of the jury that defendant did not make the sale and did not possess the liquor. If the defendant neither sold nor possessed said six drinks, then there is positively no evidence upon which a conviction can stand.

The second theory also must fall because there is no evidence that there was any sale made by any agent of the defendant or any person acting under his authority.

---

ERROR NO. III.

That the verdict convicting the defendant and petitioner of maintaining a nuisance and acquitting him of possession and sale is inconsistent.

## ARGUMENT UPON ERROR NO. III.

As repeatedly heretofore mentioned, the evidence as produced by the Government was confined to a sale of six drinks purported to have been made by defendant on the 26th day of June, 1930, to two Government agents. There was no evidence of any other violations of the National Prohibition Act. If the defendant is not guilty of the possession or sale of said drinks how, in the absence of other evidence, could he logically be guilty of maintaining a nuisance?

We understand that there is a conflict of authority with regard to inconsistent verdicts as set forth in *Lancaster* vs. *United States*, 26 Federal 2nd, 773, and that no decision directly upon this question has been made by your Honorable Court.

Upon this question we refer to *Murphy* vs. *United States*, 18 Federal 509 (8th Circuit), where it is stated in the syllabus:

> "One cannot be convicted of maintaining a nuisance under the National Prohibition Act on evidence of sale of liquor of which sale he is under another count in the same indictment acquitted; the acquittal removing such sale from consideration as an element of the nuisance charged."

See also *Boyle* vs. *United States* (8th Circuit), 22 Federal (2d) where it is held on page 548:

"That the conviction will not be allowed to stand, unless the verdict of conviction is supported by evidence other than the facts pleaded in support of the counts upon which acquittal has been had. This is the view adopted in this circuit, and apparently in the Third."

Citing

*Peru* vs. *U. S.*, 4 Fed. (2d) 881;
*Murphy* vs. *U. S.*, 18 Fed. (2d) 509;
*John Hohenadal Co.* vs. *U. S.*, 295 Fed. 489 (C. C. A. 3)

In *Soper* vs. *United States*, 27 Federal (2d) (9th Circuit), the Court referred to the question of inconsistent verdicts but did not make a direct decision upon the subject, merely holding in substance that a fiction would not operate to create an inconsistency, and that to so hold would be to extend the ruling of the Third and Eighth Circuits beyond the reasons put forth in its support by the Courts.

In *Hessee* vs. *United States*, 28 Federal (2d) 770 (9th Circuit), the Court stated that there was no inconsistency between the unlawful sale of intoxicating liquor and the acquittal on a count charging possession of the liquor, and the Court again stated that it was not found necessary to adopt or approve either rule.

In *United States* vs. *Anderson*, 31 Federal (2d) 436 (9th Circuit) the Court again referred to this question

but held that in the particular case then under consideration, it was not necessary to determine the true rule in the Ninth Circuit.

We feel that the rule as adopted in the Third and Eighth Circuits is the most logical and should be adopted by your Honorable Court.

May we refer to *Speiller* vs. *United States,* 31 Federal (2d) 682 (3rd Circuit), where it is stated in the syllabus:

> "Where there is an acquittal on one count of the indictment and conviction on another count charging the same crime, conviction will not be allowed to stand, unless supported by evidence other than that on which acquittal was based."

The attempt of the Appellate Court in the instant case to reconcile this inconsistency by resorting to the fiction of an unknown agent where there is absolutely no proof of any agency in the record and explaining the verdict of the jury upon that ground is clearly error as heretofore shown in the argument on error No. II herein.

Clearly the evidence here all relates to the same transaction. The Appellate Court in its opinion (page 5) says:

> "The fact that the appellant interposed an alibi and thus raised a clear distinction as to the evidence to support the charges in the three counts of the indictment, together with his admitted ownership of

the place in which it was charged that the common nuisance was maintained and the inferences with relation thereto resulting from the readiness with which intoxicating liquor was produced and sold in such place upon the request of four strangers, sufficiently differentiated the evidence as to the separate counts as to require an affirmance even under the rule most favorable to defendants as to inconsistent verdicts."

We do not believe that this portion of said opinion is supported by the record. The Government claimed that the defendant personally made the sale of the alleged intoxicants. The defendant denied the sale and the jury found that defendant neither made the sale nor possessed any intoxicating liquor. Therefore, even if defendant had been in said premises as contended by the Government, he could not be guilty of maintaining a nuisance because the jury found that he neither sold nor possessed liquor.

The defendant and a number of witnesses testified that he was at his ranch on the day in question and returned to his place of business about 8 o'clock P. M., which was a half hour after the Federal officers had purchased the drinks in question. There was not a line of evidence showing that any agent of defendant made the sale, or possessed liquor, or that any agent violated the law in any respect. The only evidence connecting defendant with the premises was the stipulation of counsel to the effect that defendant was the owner. Even

if the jury is to be permitted to guess that an agent of defendant made said sale, still a conviction cannot stand without evidence showing knowledge on the part of defendant or that he consented to the alleged violation. Certainly a conviction cannot stand on the mere stipulation of ownership alone.

## CONCLUSION.

The errors of the Trial Court and the Circuit Court of Appeals set forth in the petition are serious when it is considered that a prison sentence has been imposed upon defendant after the jury has found that he neither made the sale in question or possessed any prohibited liquor. In addition to presenting a record showing an unmistakable miscarriage of justice, this case also presents a conflict of authority among the Circuit Courts upon the question of inconsistent verdicts.

We respectfully submit that this conflict should be determined by your Honorable Court.

For the reasons hereinabove set forth, we ask this Honorable Court to grant the petition for a writ of Certiorari filed herewith.

Respectfully submitted,

RAYMOND T. COUGHLIN

EUGENE S. SELVAGE

CLIFFORD A. RUSSELL
*Attorneys for Petitioner*